

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:**

B-217087

**DATE:** March 25, 1985**MATTER OF:**

Airtronix, Inc.

**DIGEST:**

1. Protest based on alleged solicitation improprieties which are apparent prior to the closing date for receipt of initial proposals must be filed prior to that date.
2. Allegations first raised more than 10 days after protester was aware of basis for protest are untimely.
3. Allegation that awardee engaged in questionable management practices under previous government contracts involves a protest of an affirmative determination of responsibility which GAO will not review unless there is a showing of possible fraud on the part of the contracting officials or an allegation of misapplication of definitive responsibility criteria.
4. Alleged agency failure to provide protester with proper notice of award is a procedural deficiency which does not affect the validity of an award.
5. GAO will not reevaluate proposals or substitute its judgment for that of agency evaluators who have considerable discretion. Rather, GAO will examine record to determine whether agency judgment was reasonable and in accord with solicitation criteria.
6. Where incumbent contractor's chief engineer joins staff of competing firm, agency does not act unreasonably in not crediting other firm with incumbent's accomplishments during performance of predecessor contract.

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7. Award to higher-priced, technically superior offeror is not objectionable where solicitation states that technical considerations are worth more than price and that awardee will be determined on basis of cost/technical trade-off.

Airtronix, Inc., protests the award of a contract to Aeromet, Inc., for "Meteorological Environment Test Support" (METs), to the Kwajalein Missile Range under request for proposals (RFP) No. DASG60-84-R-0015 issued by the Army Ballistic Missile Defense Systems Command (BMDSCOM). The crux of Airtronix's protest is that it offered a technically superior proposal at a lower price than did Aeromet.

We find the protest without merit.

The RFP was issued by BMDSCOM on February 23, 1984, with an April 9, 1984 closing date for the submission of initial proposals. By letter dated July 3, 1984, Airtronix was advised that its proposal contained 11 significant deficiencies, and was advised to submit a revised proposal by July 25, which it did. Airtronix submitted its best and final offer on September 5. On or about September 21, Airtronix was sent a notice of the planned award to Aeromet; award was made and notice of award was sent to Airtronix September 28. Airtronix protested to BMDSCOM on October 1984. The agency denied Airtronix's protest on October 1984 and Airtronix filed its protest in our Office on November 9.

Airtronix's protest consists of a broad spectrum of mostly speculative assumptions regarding Aeromet's proposal and the BMDSCOM evaluation process, many of which are untimely or otherwise not for consideration.

First, Airtronix alleges that the RFP specifications were poorly drafted and biased. That allegation is untimely under our Bid Protest Procedures, since it was not filed until after the closing date for the receipt of initial proposals. 4 C.F.R. § 21.2(b)(1) (1984); Carl Goldberg Models, Inc., B-213046, May 22, 1984, 84-1 C.P.D. ¶ 539. Similarly, an allegation that award was made to the higher-priced proposal is untimely since the solicitation evaluation criteria specifically stated that since the contract is a cost-type, award would not necessarily be made based on lowest evaluated price, but proposals would be considered on the basis of cost-technical trade off, with technical being of more relative importance than price.

Second Airtronix alleges that it was not permitted to meet with agency personnel to discuss technical deficiencies in its proposal. The agency's July 3 letter indicated that deficiencies would be addressed in writing rather than orally. After Airtronix objected in a letter dated July 17 that it was entitled to face-to-face discussions, the agency declined to provide same, and advised Airtronix by letter dated September 4 that discussions had been concluded. Airtronix first protested this issue on October 12 and thus is untimely under 4 C.F.R. § 21.2(b)(2) because it did not protest within 10 days. We note that, contrary to Airtronix's assumption, there is no requirement that an agency conduct face-to-face discussions under a negotiated procurement. Department of Labor Day Care Parent's Association, 54 Comp. Gen. 1035 (1975), 75-1 C.P.D. ¶ 353; Gulton Industries, Inc., B-180734, May 31, 1974, 74-1 C.P.D. ¶ 293.

Airtronix alleges that Aeromet has engaged in questionable management practices under prior government contracts. This involves a question of responsibility. By awarding the contract to Aeromet, the contracting officer made an affirmative determination of responsibility, which our Office will not review unless there is a showing of possible fraud on the part of contracting officials or an allegation of misapplication of definitive responsibility criteria, neither of which is present here. Medi Coach, Inc., B-214034, May 2, 1984, 84-1 C.P.D. ¶ 501.

Airtronix alleges that a double standard was applied with regard to overhead rates. It speculates that Aeromet was permitted to use a higher overhead rate than Airtronix, and it bases this speculation on its purported knowledge of Aeromet's rate on previous contracts. In fact, Aeromet used a lower overhead rate on this contract than did Airtronix.

Two of Airtronix's allegations are factually inaccurate. Airtronix speculates that Aeromet's proposal included an experimental remote pilotless vehicle (RPV), which Airtronix was not given an opportunity to offer. In fact, Aeromet did not propose an RPV. Airtronix also states that BMDSCOM misadvised Airtronix on September 25 that an award decision had not yet been reached. In fact, by an undated letter, apparently mailed on September 21, the agency advised Airtronix that it planned to make award to Aeromet. By letter dated September 28, the date on which award was actually made, BMDSCOM advised Airtronix that award had been made to Aeromet. In any event, agency failure to provide proper notice of award is a procedural deficiency which does not affect the validity of an award.

Emerson Electric Co., B-213382, Feb. 23, 1984, 84-1  
C.P.D. ¶ 233.

Airtronix asserts that its proposal should have been regarded more highly than it was. In this regard the firm contends that an unnamed Air Force employee provided Airtronix with a favorable view of its proposal and was critical of Aeromet's proposal. The firm also states that in December of 1983 it hired as its chief engineer Aeromet's chief engineer, who was in charge of the METS projects for the period 1978-1983. Thus, Airtronix asserts that Aeromet's evaluated superior technical effort must have been based on prior years' experience since, as of December 1983, Aeromet's chief engineer became Airtronix's chief engineer. Airtronix also asserts that it was not credited for the innovative technical measures with respect to the METS project which it asserts were conceived by Airtronix's chief engineer at the time that he worked for Aeromet.

Obviously Airtronix assumes that all of Aeromet's experience and expertise in performing the METS contract attached personally to the chief engineer and, therefore, when the chief engineer shifted over to Airtronix, it became entitled to credit for all of the program accomplishments effected by Aeromet in performing the contract. This is an unwarranted assumption. Our review shows that Airtronix was given credit for the high caliber of certain company officers. However, the RFP evaluation criteria focused equally on corporate experience, in which Aeromet was evaluated highly while, Airtronix, a newly formed company, was evaluated poorly.

Moreover, Airtronix's initial proposal, which the Army maintained in the competitive range even though it was evaluated as marginal, received a total technical score of less than one-third of Aeromet's score. This was based on the Airtronix proposal's brevity and failure to address the statement of work, compared to Aeromet's proposal which fully met the statement of work requirements. Also, Airtronix's proposal had other major deficiencies, including the failure to identify certain required key personnel. Airtronix did not remedy these deficiencies in its revised proposals, including its best and final proposal, and the final technical score differential between the two remained the same.

The determination of the relative merits of a proposal, particularly with respect to technical considerations, is

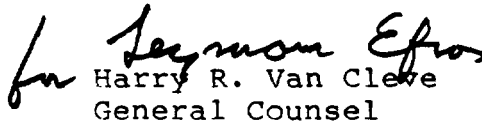
primarily a matter of administrative discretion, and the exercise of that discretion will not be disturbed unless it is shown to be arbitrary or in violation of the procurement laws or regulations. General Management Systems, Inc., B-214246, Sept. 25, 1984, 84-2 C.P.D. ¶ 351. Our Office will not reevaluate technical proposals or resolve disputes over the scoring of technical proposals. Leo Kanner Associates, B-213520, Mar. 13, 1984, 84-1 C.P.D. ¶ 299.

Here, Airtronix has a fundamental disagreement with BMDSCOM over the degree to which it should be credited with the accomplishments of an individual which were achieved during the predecessor contract for another firm. The fact that the protester disagrees with the agency's evaluation does not render the evaluation unreasonable. Ocean Data Equipment Division of Data Instruments, Inc., B-209776, Sept. 29, 1983, 83-2 C.P.D. ¶ 387.

We find that the evaluators could reasonably have concluded that Airtronix was not entitled to credit for Aeromet's contract performance because of the shift of one individual to its firm. In addition, we find that BMDSCOM reasonably concluded that Airtronix's technical proposal was deficient in addressing substantial areas under the statement of work. We have no basis to conclude that the evaluators were arbitrary or unfair in their assessment of Airtronix's proposal, notwithstanding Airtronix's assertion regarding the unnamed Air Force source.

Finally, with respect to Airtronix's complaint that award was made to a higher-priced offeror, we simply point out that the agency was not required to make award on the basis of low price. The solicitation provided that costs would not be controlling, and that the award decision would be based on a cost/technical trade-off, with technical concerns of relatively more importance than price. In light of the difference in technical score between the Airtronix and Aeromet proposals, we see no basis to object to the award decision.

We deny the protest in part and dismiss it in part.

  
Harry R. Van Cleave  
General Counsel